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In re Application of :
SMITH, et al. :
PCT No. PCT/GB05/50169 : DECISION ON PETITION
Application No. 10/578,786 :
Int. Filing Date: 29 September 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1365.107US1 :
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This is a decision on the "Petition to Add Unintentionally Delayed Claim of Priority Under 35 U.S.C. 120 And 37 C.F.R. § 1.78(a)(3)" filed 23 March 2007. An examination of the petition finds that it is in fact a request to accept two unintentionally delayed foreign priority claims. Because petitions under 37 CFR 1.78(a)(3) are limited to acceptance of delayed claims to U.S. nonprovisional applications and international applications designating the United States, and petitioner has not requested acceptance of an such claim, the petition under 37 CFR 1.78(a)(3) is **DISMISSED as moot.**

Petitioner should note that the petition procedure under 37 CFR 1.55 (c) to accept an unintentionally delayed claim of foreign priority is not available in U.S. National stage applications. Foreign priority in U.S. National stage applications is governed by 35 U.S.C. 365 (b). See also Manual of Patent Examining Procedure (MPEP) 1893.03(c):

If the priority claim in the national stage application is to an application, the priority of which was not claimed in the international stage of the international application, the claim for priority must be denied for failing to meet the requirements of the Patent Cooperation Treaty, specifically PCT Rule 4.10.

For a comparison with 35 U.S.C. 119(a)-(d) priority claims in a national application filed under 35 U.S.C. 111(a), see MPEP § 1895.01.

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